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**In The
Supreme Court of the United States**

October Term, 1991

STATE OF MINNESOTA,

Petitioner,

v

KATHLEEN RITA MCKOWN
and WILLIAM LISLE MCKOWN,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT**

**BRIEF OF AMICUS CURIAE,
THE FIRST CHURCH OF CHRIST, SCIENTIST,
IN BOSTON, MASSACHUSETTS,
IN SUPPORT OF RESPONDENTS
AND IN OPPOSITION TO PETITION**

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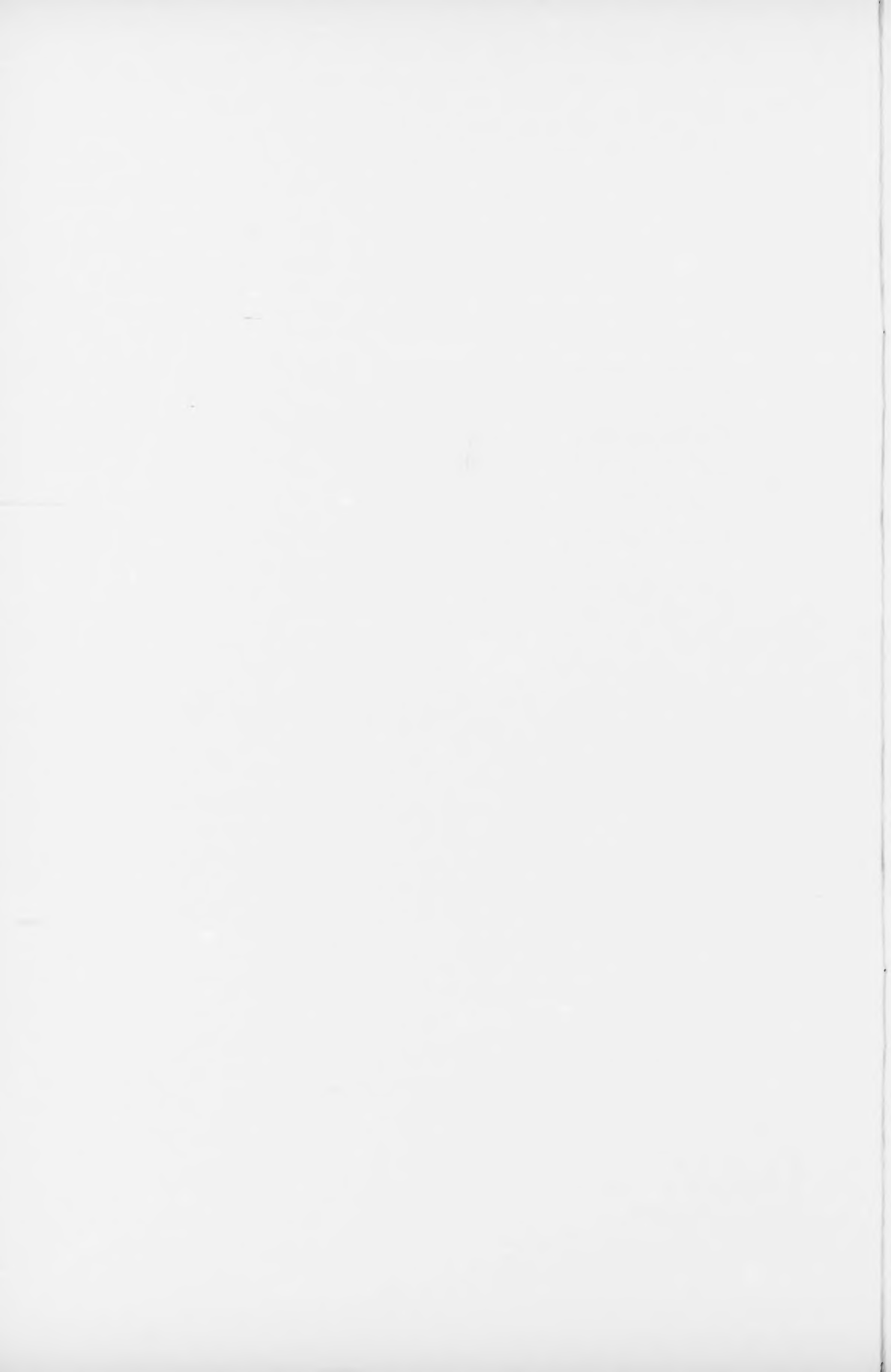
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QUESTION PRESENTED

1. The Minnesota Supreme Court upheld the dismissal, on state and federal due process grounds, of manslaughter indictments against Christian Science parents who provided prayer in lieu of medical treatment to their son in reliance upon the provisions of a Minnesota child neglect statute. Was the decision of the Minnesota Supreme Court based on an adequate and independent state ground?

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JURISDICTION

Under the provisions of 28 U.S.C. § 1257, this Court does not have jurisdiction over this case.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law

2. Article I, Section 7 of the Minnesota Constitution provides, in part:

No person shall be held to answer for a criminal offense without due process of law

STATUTES INVOLVED

1. Minnesota Statute § 609.378 (1988):

(a) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and which deprivation substantially harms the child's physical or emotional health, . . . is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

o o o

If a parent, guardian or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute "health care" as used in clause (a).

2. Minnesota Statute § 609.205 (1988):

[A] person who causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both:

(1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another . . .

INTEREST OF AMICUS

The First Church of Christ, Scientist, in Boston, Massachusetts ("The Church"), submits this *amicus curiae* opposition to the petition for certiorari. The record below shows that the McKowns were faithful Christian Scientists who conscientiously followed Christian Science tenets, teachings and practices in rearing their children and administering to their physical needs.

Their indictment and prosecution below is, in effect, a determination that the McKown's Christian Science way of life and their conscientious practice of Christian Science healing is allegedly unlawful because they relied on Christian Science healing for the health and physical well-being of their child, rather than conventional medical treatment. Although the courts below did not reach the significant free-exercise aspects of this case, it is clear that the McKowns were indicted because of their belief in and reliance upon Christian Science healing.

Christian Science is a legitimate, established religion in our society. The Church, which has supported and fostered the growth of Christian Science throughout the world, believes it has the right, duty and obligation to ensure that the rights of all Christian Scientists are protected, so as to preserve Christian Science, the Christian Science community and the Christian Science way of life. It is with these fundamental views in mind that the Church argues that the petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

The Church adds the following to the facts set forth by the Minnesota Supreme Court in *State v. McKown*, 475 N.W.2d 63 (Minn. 1991) as stated by Petitioner.

William and Kathleen McKown, the Respondents, and Mario Tosto (the Christian Science practitioner) were indicted by a Hennepin County grand jury for second degree manslaughter and for aiding and abetting each other in causing the death of Ian Lundman by culpable negligence.

Hearings were held on March 26-27, 1990 before the District Court on Respondents' motion to dismiss the indictments. (Defendant Tosto's Motion to dismiss was granted without objection by the prosecution on March 27, 1990). The District Court granted Respondents' motion to dismiss the indictments on two separate grounds.

First, the District Court held that Minnesota's child neglect statute, Minn. Stat. § 609.378, which authorizes the use of care through prayer in lieu of medical treatment, provides the applicable standard of care for parents such as Respondents who in good faith select and depend upon spiritual care in lieu of medical treatment for their children. The District Court found that the manslaughter and child neglect statutes must be read together, and that the explicit understanding of the Minnesota Legislature in enacting Minn. Stat. § 609.378 was that parents who provided care through prayer in lieu of medical treatment would not be exposed to any criminal sanctions.

Second, the District Court found that the indictments violated *both state and federal* due process of law for failing to give notice that good faith conduct under Minn. Stat. § 609.378 could be criminal conduct under Minnesota's manslaughter statute, Minn. Stat. § 609.205:

Additionally, this court believes that construing Minn. Stat. Sec. 609.205 to allow criminal prosecution of the defendants would violate their due process rights. Due process includes fair notice by the state to its citizens of potentially criminal conduct. *Kolender v. Lawson*, 461 U.S. 352, 367-8 (1983). A statute, in order to meet *federal and state due process standards of definiteness* must be such as not to leave "persons of common intel-

ligence . . . to guess at the meaning of a statute nor differ as to its application." *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985), quoting from *Connaly* [sic] v. *General Construction Co.*, 269 U.S. 385, 391 (1925).

District Court Memorandum at p. 9. [Emphasis added]. (Copies of the District Court's Order and Memorandum dismissing the indictments are included in the Petitioner's Appendix.)

The Minnesota Court of Appeals affirmed the dismissal of the manslaughter indictments against Respondents *on state and federal* due process grounds, upholding the District Court's finding that

the state's failure to provide notice of potentially criminal conduct violated the *federal and state due process standards* of definiteness.

State v. McKown, 461 N.W.2d 720, 721 (Minn. App. 1990). [Emphasis added]. (A copy of the Minnesota Court of Appeals decision is included in Petitioner's Appendix.)

The Court of Appeals further evidenced the fact that its decision was based both on federal and state grounds when it noted that:

[w]hile modern case law on this issue [of due process] is grounded almost exclusively on the fourteenth amendment of the United States Constitution *and parallel amendments in state constitutions, e.g., Minn. Const. art. I, §7*, other bases clearly exist.

State v. McKown, 461 N.W.2d at 723 n.2. [Emphasis added].

Petitioner appealed the decision of the Minnesota Court of Appeals to the Minnesota Supreme Court. Respondents' brief to the Minnesota Supreme Court contained an extensive discussion of the independent state due process principles involved in this case, which are broader than their federal counterparts, and illustrated how Minnesota courts have held that traditional constitutional protections (such as due process and free exercise) are broader under the Minnesota

Constitution than under the United States Constitution. See Pages 47-50 of Respondents' Joint Brief to the Minnesota Supreme Court. (Excerpts from which are included in the Appendix attached hereto.)

In an opinion filed September 20, 1991, the Minnesota Supreme Court affirmed the decision of the Court of Appeals, holding that the indictments against Respondents violated due process of law because the Respondents could not be prosecuted under Minnesota's manslaughter statute when they provided spiritual care in lieu of medical treatment in reliance upon Minnesota's child neglect statute (Minn. Stat. § 609.378), which explicitly authorizes care through prayer. *State v. McKown*, 475 N.W.2d 63 (Minn. 1991). (A copy of the Minnesota Supreme Court's opinion is included in the Petitioner's Appendix.)

The Minnesota Supreme Court, without expressly saying so, embraced both state and federal constitutional due process protections in reaching its conclusion. The court stated that:

[n]either the United States Supreme Court nor this court has directly addressed a similar due process claim.

State v. McKown, 475 N.W.2d at 67. Moreover, the Minnesota Supreme Court's opinion focused on the holding in *State v. Newstrom*, 371 N.W.2d 525 (Minn. 1985), a leading case on vagueness in the due process context, which was based on both the United States and Minnesota Constitutions.

SUMMARY OF ARGUMENT

The Petition must be denied because the decision of the Minnesota Supreme Court that the prosecution of Respondents constituted a violation of due process was based on an adequate and independent state ground. Indeed, the very existence of an adequate and independent state ground denies this Court of jurisdiction. However, in the event this Court cannot find that the decision below was based on such a state ground, it should remand this case to the Minnesota Supreme Court for a clarification of the opinion below.

ARGUMENT

THE DECISION BELOW RESTS
ON AN ADEQUATE AND INDEPENDENT
STATE GROUND

1. The Minnesota Supreme Court's Due Process
Decision is Based on the Minnesota Constitution.

Where a final state court decision rests on an adequate and independent state ground, this Court has no jurisdiction to review that decision. *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Klinger v. Missouri*, 80 U.S. (13 Wall.) 257, 263 (1871).

Where, as here, the opinion of the state supreme court does not specifically state that it is based on an independent state ground, this Court turns to other parts of the record below, such as trial court rulings and pleadings, to determine if the decision below rests on an independent state ground. See *Staub v. Baxley*, 355 U.S. 313, 318 (1958); *First National Bank v. Anderson*, 269 U.S. 341, 346 (1926). Applying these principles to this case, it is clear that the decision below was based on an adequate and independent state ground, and thus that this Court does not have jurisdiction.

As set forth in the Statement of the Case, *supra*, the trial court explicitly decided this case on state and federal due process grounds. The Court of Appeals, reciting the fact that the trial court found both state and federal due process violations, affirmed the holding of the lower court as to due process. The Minnesota Supreme Court's decision affirming the lower courts' rulings was thus based on independent state and federal due process grounds.

Further evidencing that the Minnesota Supreme Court's decision was based on an adequate and independent state ground is the fact that arguments under both state and federal due process principles were argued before that court. As set forth in the Statement of the Case, *supra*, Respondents' brief to the Minnesota Supreme Court contained an

extensive discussion of the independent state due process principles involved in this case.

2. The Existence of an Adequate And Independent State Due Process Ground Denies this Court of Jurisdiction.

Moreover, even if the record below did not clearly indicate that the Minnesota Supreme Court's due process ruling was based on an adequate and independent state ground, the fact that state due process is alone sufficient to sustain the ruling will prevent this Court from exercising jurisdiction. Indeed, this Court has stated:

Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction.

Lynch v. New York, 293 U.S. 52, 54-55 (1934). State due process principles under Article I, § 7 of the Minnesota Constitution alone are sufficient to sustain the decision; accordingly, under the holding in *Lynch*, the writ must be denied.¹

¹The decision in *Michigan v. Long*, 463 U.S. 1032 (1983), does not affect this result. The *Long* decision created a presumption that jurisdiction exists "when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law." *Long*, 463 U.S. at 1042. Neither of these criteria are met here. As set forth in Part I of the Argument, the decision below was based on an adequate and independent state ground. Moreover, the decision below in no way indicates that it is based "primarily" on federal law. Additionally, it should be noted that *Long* did not specifically overturn the long-standing rule set forth in *Lynch*.

In any event, the Court said in *Long*, "[t]here may be certain circumstances in which clarification is necessary or desirable, and we will not be foreclosed from taking the appropriate action." *Long*, 463 U.S. at 1041 n.6.

3. Even If This Court Cannot Find An Adequate And Independent State Due Process Ground, It Should Remand To The Minnesota Supreme Court For Clarification.

Even if this Court cannot find an adequate and independent state due process ground for the decision of the Minnesota Supreme Court, it should remand the case for a clarification of the opinion. There is applicable precedent for such a remand. For example, in *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982), this Court was faced with a ruling that an ordinance "violates both the United States and Texas constitutional guarantees of due process of law, and . . . the federal and Texas constitutional guarantees of equal protection of the law." *City of Mesquite*, 455 U.S. at 291. Adhering to the policy of avoiding unnecessary federal constitutional rulings, this Court remanded to the lower court for a clarification of its decision, stating that "[i]f Texas law provides independent support for the [lower court's] judgment, there is no need for decision of the federal issue." *City of Mesquite*, 455 U.S. at 294-95.²

As set forth in Respondent's brief to the Minnesota Supreme Court (See Appendix), Minnesota's Constitution offers broader due process protections than are provided under the United States Constitution. Accordingly, if this Court cannot find an

²Remand to the Minnesota Supreme Court would be particularly appropriate in this case to determine whether that court was relying on state due process principles in reaching its decision, given Minnesota's policy of interpreting its Constitution much more broadly than the United States Constitution. For example, in *State v. Hershberger*, 110 S.Ct. 1918 (1990), this Court remanded the Minnesota Supreme Court's decision in *State v. Hershberger*, 444 N.W.2d 282 (Minn. 1989), a case involving free exercise issues, in light of this Court's free exercise decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). On remand, the Minnesota Supreme Court explicitly found that the free exercise protections of the Minnesota Constitution were broader than those under the First Amendment to the United States Constitution. *State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990). -

adequate and independent state due process ground for the decision below, this case should be remanded to the Minnesota Supreme Court for a clarification of the state due process basis of its decision.

CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully submitted,

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APPENDIX

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**EXCERPTS FROM PAGES 47-50 OF
RESPONDENTS' JOINT BRIEF TO
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Finally, the Court of Appeals and the Trial Court expressly grounded their decisions on both the State *and* Federal Constitutions. 461 N.W.2d at 721, 723 (n. 2). (Dist.Ct.Op., p.9). This Court has recently unequivocally relied upon independent state constitutional grounds in the religious freedom arena. *State v. Herschberger*, 462 N.W.2d 393 (Minn. 1990) noted the Minnesota Constitution alone provides an independent and adequate state constitutional basis upon which to decide. *See, e.g., Michigan v. Long*, 463 U.S. 1032, 1040 (1983); L. Tribe, *American Constitutional Law*, §3-24 at 165-166 (2d Ed. 1988); Fleming and Nordby, *Minnesota Bill of Rights: Wrapt In The Old Miasmal Mist*, 7 Hamline Law Review, 51 (1984). *Herschberger*, *supra*, itemized other individual liberties that have been recognized as deserving greater protection under the state constitution including due process. *State v. Oman*, 110 N.W.2d 514, 522-23 (Minn. 1961).

State v. Gumina, 395 N.W.2d 349 (Minn. 1986) implies that state due process affords extra protections, above and beyond minimum Fifth and Fourteenth Amendment United States Constitutional guarantees. *See, also, Shreve v. Department of Economic Security*, 283 N.W.2d 506, 509 (Minn. 1979).

Both the facts of this case and textual differences of the due process clauses support a stronger state due process right.

Unlike the federal due process provisions, the Minnesota Constitution requires "[n]o person shall be held to *answer for a criminal offense* without due process of law." Minn.Const. Art. I, §7. (Emphasis added). Unless this language is entirely superfluous, it provides greater pretrial protection than the federal due process clause. The threshold for dismissal of this prosecution, before trial, on due process grounds should,

therefore, be correspondingly lower than the standard in federal courts.

Moreover, in this case, particular state interests demand heightened due process consideration. "Perhaps the most compelling basis for independently interpreting the Minnesota Bill of Rights concerns conditions unique to Minnesota." Fleming & Nordby, *The Minnesota Bill of Rights: Wrapt in the Old Miasmal Mist*, 7 Hamline Law Review, 51 (1984). In this case, the notice, reliance, lenity, and arbitrary enforcement problems stem from the contradictory commands of a state law. The concerns for religious freedom embodied in the Minnesota laws present "conditions unique to Minnesota" and justify heightened due process standards.

If this court finds that continued prosecution does run afoul of the federal due process provision, it should base its decision to dismiss alternatively on both federal and state grounds. See, *Guminga*, 395 N.W.2d at 349. This Court can thus end review of the issue. *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (the Supreme Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.")

Respondents request that this Court consider independently grounding its decision on state constitutional grounds so as to bring finality to this protracted litigation which is unnecessarily and unconstitutionally burdensome on the hearts and minds of the McKowns.

